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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,131	07/14/2003	Shane E. Weyant	DB001016-001	6900

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THORP REED & ARMSTRONG, LLP  
ONE OXFORD CENTRE  
301 GRANT STREET, 14TH FLOOR  
PITTSBURGH, PA 15219-1425

EXAMINER

MAYO, TARA L

ART UNIT PAPER NUMBER

3671

DATE MAILED: 01/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/619,131

Applicant(s)

WEYANT ET AL.

Examiner

Tara L. Mayo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 07/14/03 and 11/24/03 6) ☐ Other:

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The references lined through on the Information Disclosure Statement filed 24 November 2003 have already been cited by Applicant and considered by the Examiner.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 14. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

## **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets

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must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

#### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

#### ***Specification***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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4. The abstract of the disclosure is objected to because it contains phrases that can be implied. On line 1, delete "The present invention relates generally to a" and insert therefor --A--. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 3 through 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (U.S. Patent No. 5,285,612 A).

Johnson '612, as seen in Figure 1, discloses a wale (24) comprising:

with regard to claim 1,

a back wall (as seen in Figure 1, the lower horizontal wall);

a front wall (as seen in Figure 1, the upper wall extending in parallel to the lower wall)

having a channel (26) formed therein; and

a plurality of connecting walls (as seen in Figure 1, elements 28 and 32, and the vertical end walls extending between the upper and lower walls) connecting said back and front walls to form at least one chamber (22) between said back wall and said front wall;

with regard to claim 3,

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wherein said wale is of a unitary construction and said plurality of connecting walls includes a top wall, an upper reinforcing wall, a lower reinforcing wall, and a bottom wall, and wherein a plurality of chambers are between said back wall and said front wall;

with regard to claim 4,

wherein said wale further comprises a pultruded composite material (col. 3, lines 7 through 11); and

with regard to claim 5,

wherein said composite material is fiberglass reinforced plastic resin impregnated composite (col. 3, lines 11 through 22).

Johnson '612, as seen in Figure 1, discloses a wale (24) comprising:

with regard 6,

a back wall (as seen in Figure 1, the lower horizontal wall);

a front wall (as seen in Figure 1, the upper wall extending in parallel to the lower wall) having a top portion and a bottom portion interconnected by a C-shaped channel portion (26);

a top wall (as seen in Figure 1, the left-most vertical end wall extending between the upper and lower walls) connecting said back wall to said top portion; and

a bottom wall (as seen in Figure 1, the right-most vertical end wall extending between the upper and lower walls) connecting said back wall to said bottom portion to form a chamber between said back wall and said front wall; and

with regard to claim 7,

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an upper reinforcing wall (28) and a lower reinforcing wall (32) each connecting said back wall to at least one of said top portion, said C-shaped channel portion, and said bottom portion such that a plurality of chambers are formed between said back wall and said front wall.

With regard to Applicant's recitations in claims 1 and 6, respectively, of a wale "for use in bracing a retaining wall" and a "retaining wall wale", it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (U.S. Patent No. 5,285,612 A).

Johnson '612 further discloses:

with regard to claim 2,

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said wale being of a unitary construction and said plurality of connecting walls including a top wall and a bottom wall.

Johnson '612 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 2,

a single chamber being formed between the back wall and the front wall.

With regard to claim 2, it would have been obvious to one of ordinary skill in the art of structures at the time of invention to modify the device shown by Johnson '612 such that it would comprise a single chamber between the back wall and the front wall. The motivation would have been to conserve materials by satisfying minimum strength requirements for a desired application.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tasi (U.S. Patent No. 5,901,523), as seen in Figure 2, shows a structural element similar to the claimed invention.



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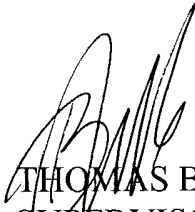
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



PLM  
16 January 2004



THOMAS B. WILL  
SUPERVISORY PATENT EXAMINER  
GROUP 3600